GOVERNMENT OF MYSORE

Food, Civil Supplies and Labour Department

Labour Dispute.—Industrial Dispute between the workmen and the management of Gejjalagere Halu Utpadakara Sahakara Sangha, Gejjalagere, Maddur Taluk.

Award of the Labour Court, Mandya—Published.

Read the following Papers:

(1) Letter No. M. TO No. 4604/72, dated 29th November 1972 from Sri R. B. Hanmantgad, Presiding Officer, Labour Court, Mandya.

IN THE COURT OF THE DISTRICT JUDGE AND EX-OFFICIO PRESIDING OFFICER, LABOUR COURT AT MANDYA

Dated this 24th day of November 1972

Present

Sri R. B. HANUMANTGAD, LL.B.,

District Judge and Presiding Officer.

MIS (IDA) No. 6/1972

First Party:—

Srikantiah, son of Dallali Thammegowda, Gejjalagere Village, Maddur Taluk.

(By Sri N. L. Nagappa, President, M.D.G. Workers Union, Mandya).

Vs.

Second Party:—

The Management of Gejjalagere Halu Utpadakara Sahakara Sangha, Gejjalagere, Maddur Taluk.

(By Sri Achar Krishna Murthy, Advocate):

Reference

Government Order No. FCL 519 LLD 71, dated 29th February 1972.

AWARD

1. The Government of Mysore by their order No. FCL 519 LLD 71, dated 29th February 1972 have referred an industrial dispute existing between the above parties to this court for adjudication on the points of dispute, viz. Is the Management of Gejjalagere Halu Utpadakara Sahakara Sanga, Gejjalagere, Maddur taluk, Mandya District, justified in retrenching the services of Sriyut Srikantiah with effect from 5th September 1969, and if not, to what relief is the said person entitled? On receipt of the above reference it was registered in the above case and notices were issued to the parties to appear and file their statements.

2. The I party filed his statement on 15th April 1971 alleging that he is a workman with II Party and he joined as an attender at a salary of 70 rupees per month and he continued to work as Attender till 5th September 1969 and that by an order, dated 6th September 1969 the II Party retrenched his services with effect from 5th September 1969 and in his place another employee by name Venkatachari is appointed and that he immediately raised an industrial dispute with the 2nd party and the conciliation proceedings started with the Labour Officer, Mysore ended with out any settlement and thereafter the Government of Mysore have referred the dispute to this court for adjudication. The retrenchment of the worker is illegal and **mala fide**. One month notice was to be given for retrenchment and the same was not done and retrenchment compensation was also not given to him. The 2nd party has violated the mandatory provisions of S. 25-F of the Industrial Disputes Act. The order of retrenchment is arbitrary and contrary to the provisions of S. 25-F of the Industrial Disputes Act. The retrenchment of any employee in continuous service effected without complying the provisions of the said Act is invalid and inoperative. Therefore, he is entitled to be reinstated with all past wages. In the circumstances an order be passed for reinstatement with all back wages.

3. The II Party filed the statement on 18th August 1972 contending among other things that the Labour Court has no jurisdiction to entertain this dispute. The II Party is the Co-operative Institution. Any dispute touching the constitution, management or the business of the society shall have to be referred to the Registrar of Co-operative Societies for decision and that no court shall have jurisdiction to entertain any dispute between the employer and the employee of the society. Moreover, the claim made out by the I party is also barred by limitation. The dispute ought to have been raised with the Registrar of Co-operative Societies within a period of two years viz., the date on which the alleged illegal act of the society took place. More-over,— worker has fallen into bad habits and he misbehaved with the other

employees of the society and also with the women folk that used to come to the Society. Inspite of advice given to the worker he did not improve. Due to the misbehaviour of the employee the society suffered much. Hence, he was to be retrenched along with another attender. On one day the worker Srikantiah misbehaved by snatching away the registers, etc., of the society and on another day he caused loss to the extent of 300 rupees. Under this back-ground of his misconduct he was retrenched. It was also for some economy measure. There was no illegality committed in the dismissal of the workman. So, the worker is not entitled to be reinstated as requested by him.

4. On the above pleadings, the following issues are framed for decision :—

(1) Whether Labour Court has no jurisdiction to adjudicate the dispute, as contended by the second party ?

(2) Whether the claim made by the first party is barred by time, as contended by the second party ?

(3) Whether the second party proves that the workman of the first party was to be retrenched for misbehaviour and other misconduct, as contended ?

(4) Whether retrenchment is justified within the eye of law ?

(5) Whether one month's notice was necessary to make retrenchment of the workman, as alleged by the first party ?

(6) Whether the workman is entitled to the reliefs sought for ?

(7) What order ?

Findings

(1) No. The Labour Court has jurisdiction to adjudicate the dispute.

(2) No.

(3) Not proved.

(4) No.

(5) Yes.

(6) Yes.

(7) As per orders.

Reasons

5. The second party is a Co-operative Institution registered under the Mysore Co-operative Societies Act, 1959. The workman Srikantiah was admittedly in service of the 2nd party for about four years. He worked as an attender. It is the case of the 2nd party that Labour Court cannot adjudicate any dispute that arises between employer and the employee of the society. However, it is not the correct position of law. The Registrar of Co-operative Societies cannot adjudicate any such dispute. In a recent case of our Mysore High Court Kunni Mudimalli D.P.P. Pathina Vyavasaya Sahakara Sangha, Ltd. .Vs. Sivappa—1972 (2) Mysore Law Journal page 327 it is held that a dispute raised by the Secretary of the Society who had been dismissed in relation to the dismissal is not a matter touching the business of the society and the dispute does not fall within the scope of S. 70 of the Mysore Co-operative Societies Act. It is observed in this case that the words 'touching the business' cannot include any relation to the dismissal of the employee. The word 'business' is interpreted to mean equated with the actual trading or commercial or other similar business activity of the society and it cannot extend to matters like regulating the conditions of services of its employees. In a case arising from the Andhra Pradesh Co-oeprative Societies Act, the Supreme Court has held in A.I.R. 1970 S.C. 245 that a dispute between the employer and the employees of a Co-operative Institution cannot be referred to the Registrar of Co-operative Societies and the dispute relating to the conditions of services etc., can only be granted by an Industrial Tribunal and it cannot fall within the scope of the powers of the Registrar dealing with a dispute under S. 61 of the Act. (this section is equivalent to S. 70 of the Mysore Act). Therefore, such a point raised by the second party cannot be upheld. It is only the Labour Court that can adjudicate the dispute which has arisen in the present case.

6. Another point raised by the 2nd party is that the claim of the first party is barred by time. It also cannot be accepted. The worker was retrenched with effect from 6th September 1969. The worker raised the dispute with the Labour Officer at Mysore and he had given a notice of it to the President of the second party. It is so found from Ex-P-1 which is dated 10th December 1970. The matter could not be amicably settled with the intervention of the Labour Officer. The Labour Officer referred the proceeding to the Government. Some correspondence caused between the Labour Officer and the Government. The entire file is called for from the Labour Officer. As per Rule 31(2) of the Mysore Co-operative Societies Act Rules, 1960, the dispute is to be raised within 2 years. In fact, the dispute is raised within 2 years from the date of the alleged retrenchment. The order of retrenchment is dated 6th September 1969 and the workman of the first party represented to the Labour Officer on 10th December

1970. Meanwhile there was some correspondence between the Labour Officer and the Government and the Government referred the dispute to this court by its order, dated 29th February 1972. In a case from our Mysore High Court in Vasudeva Rao Vs State of Mysore—1963 (2) Labour Law Journal page 717, the Government passed an order of reference after some delay. The Government had refused to refer the dispute for adjudication in the first instance but after some time the matter was reconsidered and the dispute was referred for adjudication. It is observed in this case that it is not necessary to examine the reasons which made the Government in reconsidering the prior order, as it is a matter entirely within the competence of the State Government. It is also observed in this case that question of delay alone either in respect of the origin of the dispute or the order of reference cannot affect the jurisdiction of the State Government to make reference and that the question of delay may be taken into consideration if there are mala fides and that the delay by itself cannot give rise to a presumption of mala fides. In the present case, no such things are proved. Therefore, I hold that the claim is not barred by time.

7. The version of the second party is that the worker Srikantiah was dismissed or retrenched for his behaviour and misconduct. No enquiry was held against him about the same. Two witnesses are examined who are Puttalingiah (D.W. No. 1) and G. Thammiah (D.W. No. 2). The witness Puttalingiah deposed that he also worked as attender with second party and that Srikantiah also worked as Attender. He also deposed that on one day Srikantiah misbehaved with a woman in the office of the society and he was drunk then and society complained against him with the Assistant Registrar of Co-operative Societies. He also deposed that on one day Srikantiah snatched away all the records of the office from the Secretary and the assembled people took away the cash from the office and there was great 'galata' and then a meeting of the society was held and society resolved to remove Srikantiah from his post. In his cross-examination he stated that Srikantiah misbehaved with a woman in the society as well as at Sadaholalu where he used to go to bring milk. However, he further stated that no complaint was filed against him. According to him, he does not know the misbehaviour of Srikantiah at Sadaholalu village. He further stated that only oral enquiry was held against Srikantiah. The witness Thammiah was one of the directors of the society and he deposed that Srikantiah was an attendar with the society and he used to go to Sadaholalu village to bring milk and that that villagers complained about the misbehaviour of Srikantiah. He also deposed that on one day Srikantiah came dead drunk and spoke volgour language in the office and there was 'galata' and the milk that had been brought was spoiled and some amount was taken

away and two meters were broken and Srikantiah snatched away the same and they were broken and there was loss to the society, and the matter was reported to the Assistant Registrar of Co-operative Societies and Srikantiah apologized. According to him, society resolved to remove Srikantiah for want of work but after two months one Puttalingiah was appointed as attender. In his cross-examination he stated that he does not remember the date of 'galata' and that no criminal case was started against Srikantiah. However such evidence adduced is not sufficient to prove the alleged misbehaviour or misconduct of Srikantiah. The second party is not definite whether the services of Srikantiah were retrenched or he was dismissed. Under S. 25-F of the Industrial Dispute Act three conditions are specified which must be satisfied before a workman can be retrenched. The first condition is one month's notice to be given to the workman proposed to be retrenched. The notice must be in writing. However, if the employer wants to retrench immediately instead of the notice the worker is to be paid wages for the period of the notice. Moreover, the reasons for retrenchment must be communicated to the workman in writing. Secondly the workman has to be paid at the time of retrenchment compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. Thirdly the notice must be in the prescribed form and it is to be served on the appropriate Government or such authority as may be specified by it. In the present case, if the termination of the services of Srikantiah was mean as retrenchment, these conditions laid down in S. 25-F of the Act are not followed. The worker Srikantiah is examined as P.W. 1. He deposed that he was in service of second party as an attender from 1965 and he was paid 70 rupees per month and that he was retrenched from service with effect from 5th September 1969. He also spoke about the labour dispute raised. He denied the suggestion made out to him about the misbehaviour levelled against him. If it is the case of dismissal, no enquiry was held against him as required under the law and so it cannot be upheld. As held in State of Bombay Vs. Hospital Mazeder Sabha—A.I.R. 1960 S.C. 610, retrenchment of an employee in continuous service effected without complying with the mandatory provisions of S. 25-F of the Industrial Disputes Act renders the order of retrenchment invalid and inoperative and the consequence of such non-compliance is that the employee is entitled to be reinstated in his original post. Therefore, the removal of the worker Srikantiah either by way of retrenchment or by way of dismissal cannot be upheld. In the circumstances, he is entitled to be reinstated with all back wages.

8. In the result, the reference is answered in the affirmative with directions to the II Party to reinstate the workman Srikantiah with all

back wages. The II Party to pay the costs of the I Party. Such costs fixed at 50 rupees.

Dictated to the Stenographer, transcribed by him, revised and pronounced by me in open court this 24th day of November 1972.

R. B. HANMANTGAD,
District Judge and **Ex-Officio**
Presiding Officer, Labour Court,
Mandya.

APPENDIX

I. List of witnesses examined for the I Party :—

P.W. 1—Srikantiah (1st Party).

II. List of witnesses examined for the II Party :—

D.W. 1—Puttalingiah.

D.W. 2—G. Thammiah.

III. List of documents produced and marked as Exhibits on behalf of the I Party :—

Ex. P-1.—Original application, dated 10th December 1970 sent to Labour Officer, Mysore by Srikantiah—I Party.

Ex. P-2.—Copy of resolution, dated 8th March 1971 passed by Milk Producers Co-operative Society, Gejjalagere.

IV. List of documents produced and marked as Exhibits on behall of the II Party :—

NIL.

R. B. HANMANTGAD,
District Judge and **Ex-Officio**
Presiding Officer, Labour Court,
Mandya.

"COPY"

....,
Chief Administrative Officer,
District and Sessions Court,
Mandya.
29—11—72.

ORDER

Bangalore, dated the 23rd December 1972

S. O. 231.—Whereas by State Government Order No. FCL 519 LLD 71, dated 29th February 1972 the Industrial Dispute between the workman and the Management of Gejjalagere Halu Utpadakara Sahakara Sangha, Gejjalagere, Maddur Taluk, was referred to the Labour Court, Mandya for adjudication;

And, whereas, the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

Now, therefore, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the Mysore Gazette.

[No. FCL 251 LLA 72.]

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,

Under Secretary to Government,
Food, Civil Supplies and Labour Department.